



Oregon CZARA

Tillamook Bay Watershed Council February 25, 2014



EPA Region 10, OWW and Oregon DEQ



WHAT WE WILL DISCUSS

- Brief background on CZARA & Oregon's Coastal Nonpoint Program
- Oregon Settlement Agreement and Program Decisions
- Remaining Issues to Address
- The Path Forward

Coastal Zone Act Reauthorization Amendments (CZARA)



- Enacted Nov. 5, 1990; Jointly administered by EPA & NOAA; EPA published (g) guidance in Jan. 1993
- CZARA = CZMA Section 6217, which requires states **participating in** NOAA's CZMP to develop coastal nonpoint pollution control programs (CNPCPs)
- 34 states and territories currently participate in the National CZM Program



CZARA's Purpose & Mandate

- States must “prepare and submit” to NOAA & EPA CNPCPs that “shall be closely coordinated with State & local WQ plans & programs developed pursuant to sections 208, 303, 319, & 320” of CWA.
- Specifically, “State programs shall serve as an update and expansion of the State NPS management program developed under section 319”
- 56 Management Measures across these categories:
Agriculture, Urban, Forestry, Marinas, Hydromodification, Wetlands – In Oregon @ 40 MMs apply
- *Each state shall also contain... additional management measures... necessary to achieve and maintain applicable water quality standards... and protect designated uses.*



CZARA Timeline in Oregon

- 1995 – Oregon submitted its Coastal Non-point Source Control Program to NOAA/EPA
- 1998 – NOAA/EPA completes review and identifies issues to be addressed
- 2004 – NOAA/EPA provides further review
- 2007-Oregon submits revisions
- 2008- NOAA/EPA provide further review
- Note: Consistency in Findings
- 2009 – NWEA files suit



Oregon Lawsuit Overview

- NWEA sued NOAA and EPA for failing to fully approve (without conditions) or disapprove OR's CNPCP. The parties settled Summer 2010. NWEA's primary concern was impacts from timber harvest **and forest roads**.
- ~~To provide a~~ **B**asis for settlement, ODEQ committed to:
 - Implement a TMDL approach with specific source delineations and enforceable load allocations for all significant NPS including forestry – Mid-Coast TMDL
 - Combine this enforceable approach with identified BMPs that, if implemented, provide a safe harbor from enforcement
 - Issue implementation orders to significant sources
- Agreement established timeline with milestones to approve or disapprove OR's CNPCP by 2014 .



Oregon SA: Critical Deadlines

- By Dec. 31, 2012, NOAA-EPA provide ODEQ an initial assessment of the viability of its TMDL strategy for achieving WQS and addressing OR's remaining forestry conditions.
- **By Nov. 15, 2013***, NOAA-EPA must publish a decision for public notice & comment on our intent to approve or disapprove OR's CNPCP. Intent to disapprove requires 90-day public comment period.
 - ***Federal shutdown resulted in delays & grounds for new timeline. Proposed decision published on Dec. 20, 2013.**
- Public Comment Period closes March 20, 2014
- **EPA and NOAA to issue a final decision on May 15, 2014**



Oregon's Unmet Conditions

- New Development – “reduce average annual sediment loads by 80%”—post-construction
- On-site Sewage Disposal Systems – “Inspect OSDS at a frequency adequate to ascertain whether OSDS are failing”
- Additional MMs for Forestry
 - Increase protections for medium, small & non-fish-bearing “Type N” streams
 - Increase protections for landslide prone areas
 - Address impacts from forestry roads, esp. legacy roads
 - Ensure adequate stream buffers for application of certain chemicals, esp. aerial pesticide spraying on steep slopes



NOAA/EPA's Pesticide Issue

- In 1998, NOAA/EPA placed a condition on Oregon's CNPCP that they needed to provide adequate buffers for aerial application of herbicides for non-fish-bearing streams
- Oregon follows on State's Pesticide Control Law, BMPs set by Oregon Department of Agriculture and EPA labeling requirements under FIFRA
- NMFS (part of NOAA) has issued several BiOps saying EPA needs to change pesticide labels to provide greater protection of salmon.
- EPA is working with NMFS on suitable solution



Agriculture Concerns

- In 2004 NOAA/EPA issued tentative approval of State's agriculture programs with strong recommendation that the State Program needs to take a holistic pollution prevention approach and needs to be proactive in implementing its programs; NOAA/EPA decision weighed heavily on the success of the Ag Water Quality Management Program
- NOAA/EPA have received comments regarding OR's programs for meeting the Ag MMs. Issues include:
 - Enforcement is limited and largely complaint driven
 - AGWQMA plan rules ~~are too general~~ **don't require specific management measures**
 - AWQMA plans focus on impaired areas **but not preventing degradation of areas with higher water quality and aquatic habitat** ~~when the focus should be on protection and restoration~~
 - ~~There may~~ **No clear**, formalized process to track implementation and effectiveness
 - AWQMA plans do not address legacy issues
- NMFS recent Coho listings and draft recovery plans identified that insufficient riparian buffers around agricultural activities contribute to salmon decline
- EPA-NOAA are inviting public comment on OR's Ag program.



State Actions taken to address the Remaining Issues

- OSDS –
 - Working with Oregon Realtors Association to develop voluntary inspection program
 - Standardized inspection report form
 - Outreach and education
 - Voluntary inspection reporting (tracking system)



State Actions taken to address the Remaining Issues

- New Development



State Actions taken to address the Remaining Issues

- Forestry

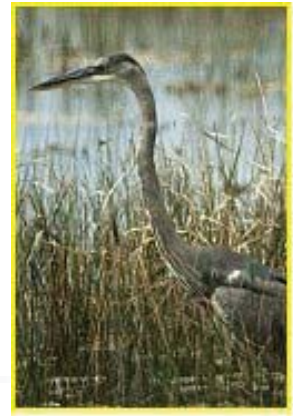


Actions following Notice of Intent to Disapprove

- NOAA/EPA will carefully consider comments received and additional information from the State
- Develop a “Response to Comments” document
- NOAA/EPA intend to make a final decision regarding the disapproval of OR program by 5/15/14



CZARA's "Penalty Provision"



- NOAA withholds portion of CZMA funding that supports implementation of the state's coastal management program
- EPA will also have to withhold a portion of Section 319 funding under the CWA that supports the implementation of the state's nonpoint source program
- Withheld funds could range from \$900,000 to \$1.2 million depending on appropriations level



CZARA – Moving Forward

- Preventing/reducing NPS pollution is critical to all of us. NPS pollution is the most significant remaining water quality issue in Oregon
- NOAA/EPA recognize the complexities and challenges Oregon faces in developing a fully approvable Coastal Nonpoint Program
- We are committed to working in partnership with Oregon to help meet this challenge and to address the remaining issues.
- We have regular calls/meetings with the state and continue to work on the remaining issues